

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

September 9, 2010

CDUP Exp. Date: December 31, 2020

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Amendment to Conservation District Use Permit (CDUP) OA-2670 to Construct a Marina Entrance Channel at Honouliuli, Ewa, Hawaii

PERMITTEE: HASEKO (EWA), Inc.

LANDOWNER: State of Hawaii

LOCATION: Submerged Land, Honouliuli, Ewa, Oahu

TMK: Makai of plat (1) 9-1-012

SUBZONE: Resource

BACKGROUND:

The subject area exists on the south shore of Ewa, Oahu and is part of the Ocean Pointe Master Plan. On April 26, 2000, the Board of Land and Natural Resources (Board) approved the first amended Findings of Fact, Conclusions of Law Decision and Order conditionally granting Haseko a Conservation District Use Permit to construct a marina entrance channel at Honouliuli, Ewa, Oahu (**Exhibit 1**).

On July 13, 2001 the Board approved a request by Haseko to amend CDUP OA-2670¹ to recognize a reduction in the size of the marina from 120 acres to approximately 70 acres. This amendment to the permit did not change the size of the entrance channel that is located within the Conservation District (**Exhibit 2**).

On February 22, 2008, the Board approve the following amendments to CDUP OA-2670:

¹ Condition # 32 of CDUP OA-2670 states, " Implementation of the project shall be in general conformity with the representations made in the application on file with the Department and at the contested case hearing. Any substantial change in the size or nature of the marina as determined by the department shall require an amendment to the permit. Any change that the department determines to be incidental, shall be permitted upon review and approval of the Chairperson."

1. That the area of Hoakalei Marina shall be amended to reflect a reduction from approximately 70 acres to approximately 53.76 acres;
2. That Condition #11 be amended to state: The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as part of the deed instrument for the final TMK(s) that contains the marina component, prior to submission for approval of construction plans for the marina channel;
3. That Condition #22 be amended to state: The applicant shall provide fully developed and Government approved plans for constructing a flood drainage system in concert with the drainage plans for the upper development of Kapolei, Ewa Villages, and other developments in the Kaloi Gulch watershed;
4. That all other conditions imposed by the Board under CDUP OA-2670, as amended, shall remain in effect.

A petition for a Contested Case was filed on February 29, 2008 that appeared to challenge the reduction of size of the marina and was subsequently denied by the Board on December 12, 2008. However a new issue was raised at this meeting and the Board allowed the petitioner an opportunity to amend his petition. The Department on December 18, 2008, received the amended petition. By correspondence dated January 15, 2009, Haseko withdrew its request to reduce the size of the marina due to the economic downturn and stated that going through a contested case and potential appeal process was not productive use of both Haseko's and the Department's limited resources.

In accordance with this withdrawal, on February 13, 2009, the Board rescinded its February 22, 2008 approval to reduce the size of the marina to 53.76-acres.

AMENDMENT REQUEST

Haseko again requests a reduction in size of the Hoakalei Marina that is not within the Conservation District. The current proposal is to reduce the Marina from approximately 70 acres to approximately 54 acres. This reduction in the size of the marina basin is being proposed to enhance public use areas to better reflect the public nature of the marina (**Exhibit 3**).

Under CDUP OA-2670, HASEKO is mandated to provide public facilities and amenities around the marina (**See Exhibit 1, Condition 15. PUBLIC ACCESS/FACILITIES RELATED**). According to the permittee, Haseko has worked closely with a number of Ewa Beach kupuna who have expressed a desire and need to pass along their knowledge and cultural traditions to those who will carry on and preserve the culture and also to visitors so as to engender respect and understanding for the environment and Hawaii's unique cultural heritage.

Haseko visualizes the marina area to include cultural displays, educational signs and kiosks, and other features that could create outdoor spaces celebrating the history of Ewa, coastal & maritime matters, Hawaii's culture and the natural resources. Open-air amphitheater, a hula mound, areas for multigenerational and accessible uses where people can relax and enjoy the marina ambiance are envisioned. The marina district could be a place where people actively engage in the preservation and perpetuation of cultural knowledge and traditions. By reducing the marina

basin, there will be an increase in open space dedicated for public use. The Hoakalei Marina is proposed to provide for maritime-related businesses, commercial uses as well as an employment center.

There is no change in the physical disturbance of the marine environment as the size and dimensions of the marina entrance channel within the Conservation District shall not be altered. It is believed that the reconfiguration of the marina is not expected to significantly alter water quality impacts as the level and types of marina activities that may affect ocean water quality will remain substantially the same.

As 16-acres is a substantial area of reduction, Board approval is required pursuant to CDUP OA-2670 condition #32 which states in part, *"...any substantial change in the size or nature of the marina as determined by the Department shall require an amendment to the permit..."*.

DISCUSSION:

The proposed reduction of the marina from approximately 70-acres to approximately 54-acres shall not affect the size of the entrance channel and therefore shall not change the nature, character, and extent of activity within the Conservation District as represented to the Board during the application process or the contested case proceedings nor should it result in any other or greater impacts than anticipated in the original Environmental Impact Statement for the project.

As such, Staff recommends as follows:

RECOMMENDATION:

That the Board of Land and Natural Resources approve the following amendment to CDUP OA-2670:

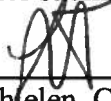
1. That the area of Hoakalei Marina shall be amended to reflect a reduction from approximately 70 acres to approximately 54-acres; and
2. That all other conditions imposed by the Board under CDUP OA-2670, as amended, shall remain in effect.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Laura H. Thelen, Chairperson
Board of Land and Natural Resources

- I. With the conditions imposed by the Board of Land and Natural Resources in its Decision and Order herein, the entrance channel at Honouliuli Ewa, Oahu, is in compliance with the provisions of Chapters 183 and 205, Hawaii Revised Statutes, and Title 13, Chapter 2, Hawaii Administrative Rules.
- J. Any finding of fact herein contained in this decision and order which is determined to be more properly deemed a conclusion of law, is hereby incorporated in this part and made a conclusion of law herein.
- K. Because fishing is a traditional and customary practice of native Hawaiians and others along the shoreline adjoining Haseko's proposed Ewa Marina Project and in the waters where Haseko proposes to build the entrance channel to its proposed marina, Native Hawaiians, including Howell and her family, who engage in such activities are exercising rights "established by Hawaiian usage." § 1-1, H.R.S., see Pele Defense v. Paty, 73 Haw. 578 (1992), and protected under Haw. Const., Art XII, § 7. [SEBO proposed COL 7.]
- L. The BLNR has reviewed the evidence presented at the hearing pertaining to the issue of traditional and customary native Hawaiian rights exercised in the project area including the environmental effects the project will have on those rights. The Board finds that those rights have been sufficiently protected with the issuance of this conditional approval.

IV. DECISION AND ORDER

Based on the Findings of Fact and Conclusions of Law stated herein, IT IS THE DECISION of the Board of Land and Natural Resources to conditionally grant the applicant a Conservation District Use Permit for a marina entrance channel at Honouliuli, Ewa, Oahu, subject to the following conditions:

STANDARD CONDITIONS

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments and applicable parts of Section 13-2-21, Hawaii Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers,

employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

3. Since this approval is for use of conservation lands only, the applicant shall obtain appropriate authorizations through the Division of Land Management, State Department of Land and Natural Resources for the disposition of State land[s] in compliance with Chapter 171, HRS;
4. That in issuing this permit, the Department and Board have relied on the information and data which the applicant has provided in connection with the permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
5. That all representation relative to mitigation set forth in the accepted Environmental Impact Statement for this proposed use are hereby incorporated as conditions of this approval;
6. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void;
7. Other terms and conditions as prescribed by the Chairperson consistent with this Findings of Fact, Conclusions of Law, Decision and Order,
8. That the applicant understands and agrees that this permit does not convey any vested right(s) or exclusive privilege.
9. That the applicant notify the Department in writing when construction activity is initiated and when it is completed.

MODIFIED STANDARD CONDITIONS

10. The applicant shall comply with all applicable Department of Health Administrative Rules; including the Section 401 Water Quality Certification conditions; all applicable conditions of the U.S. Army Corps of Engineers Permit No. PODCO 2117 dated June 28, 1993, and applicable conditions of the Unilateral Agreement Declaration for Conditional Zoning;
11. The applicant shall provide documentation (i.e. book/page or document number) that this approval has been placed in recordable form as part of the deed instrument for TMK: 9-1-12: 6, prior to submission for approval

of construction plans;

12. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. The construction plans shall show the alternate public access routes to be used during construction. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant;
13. The evidence presented herein supports approval of Standard Condition 13-2-21(a), HAR, criteria met under 13-2-21(c)(1-4), HAR: Any work or construction to be done on the land shall be initiated within five years of the approval of such use, and all work and construction must be completed within ten years of the approval of such use;
14. **CONSTRUCTION RELATED**
 - A. The applicant shall provide written advance-notice to the U.S. Coast Guard at least 30 days prior to any dredging or blasting;
 - B. Prior to the submission for approval of construction plans, the applicant shall furnish the Department's Division of Aquatic Resources with a blasting plan for review and approval, if blasting is deemed necessary;
 - C. Existing public access to and along the shoreline shall not be restricted during construction except as necessary to ensure safety. (p. 40 CDUA, p. VI-3 FEIS) In the event that public access is restricted, the applicant shall provide alternate public access routes;
 - D. The applicant shall leave a berm along the shoreline separating the marina entrance channel and the marina itself. The berm shall remain in place until the entire marina is completed before being removed;
 - E. During construction, fishing along the seaward shoreline shall remain open as long as possible. The shoreline berm separating the marina from the ocean shall be wide enough to accommodate both construction operations and public access for fishing;

- F. Prior to connecting the marina waterways to the ocean, the applicant shall remove the collected silt and sediment within the marina;
- G. The applicant shall implement erosion control measures during construction, such as silt curtains;
- H. If applicable, the applicant shall construct the causeway or trestle within the channel boundaries;
- I. Disposal of excavated material shall be in compliance with the U.S. Corps of Engineers Department of the Army Permit;

15. **PUBLIC ACCESS/FACILITIES RELATED**

- A. Prior to breaching the shoreline to connect the marina with the ocean, the applicant shall construct piers that provide public fishing access along the banks of the marina. The piers shall be designed to accommodate the physically challenged;
- B. Should the applicant convey to the City and County of Honolulu (City) the approximate nine acres of beachfront land adjacent to Oneula Beach Park identified in the City's Ordinance 93-94 ("Unilateral Agreement and Declaration for Conditional Zoning") that prior to breaching the shoreline to connect the marina with the ocean, the applicant shall implement the "Oneula Improvements;"
- C. To protect the traditional and customary rights exercised in the project area, during construction of the marina, access to the shoreline fronting the project area must be permitted for the reasonable exercise of traditional and customary practices of native Hawaiians to the extent feasible and safe;
- D. After completion of the project, the applicant will provide, in addition to any other access for traditional and customary practices that may be established in any subsequent or future proceeding or by agreement, public access for the purpose of permitting the reasonable exercise of traditional and customary practices of native Hawaiians, to include the following;
 - 1. Dedication of approximately nine acres of beachfront land adjacent to Oneula Beach Park identified in the City's Ordinance 93-94 ("Unilateral Agreement and Declaration

for Conditional Zoning"), or alternatively, dedication to a perpendicular access to the shoreline which shall be no closer than 600 feet from the eastern boundary of Oneula Beach Park;

2. Dedication of the boat launching complex to the State of Hawaii as set forth in paragraph 15.F., below; and
3. Shoreline access on either side of the marina entrance channel as set forth in paragraph 15.G., below.

- E. The applicant shall make at least fifty percent of the boat slips available to the general public at reasonable market rates;
- F. The boat launching ramp complex shall be completed in a timely manner following breakout to the ocean. The applicant shall dedicate the launching ramp complex to the State of Hawaii. The launching ramp complex shall be operated and maintained by the State or others as a State launching facility. Subject to applicable laws, the State may at any time enter into a joint venture or operating contract with the Applicant for the operation and maintenance of the boat launching ramp complex as a State launching facility. In addition to the seven launching ramps, the launching ramp complex shall include: about 150 associated trailer parking, public parking, boat wash down areas, restrooms and outside showers. The launching ramp complex shall be open and available 24 hours a day;
- G. The applicant shall provide shoreline access with nearby restrooms, showers, and parking areas free-of-charge on each side of the channel;
- H. The applicant shall provide public access to and around the entire marina facilities through a series of internal vehicular, bicycle and pedestrian ways. The pedestrian pathway around the edge of the marina shall be open and available to the public free of charge at all times, excepting during the actual construction of the project and upon a determination by the Department or other governmental agency that if it is unsafe to permit public access to that area;
- I. The applicant shall provide well-signed and lit public pedestrian access around the edge of the marina; including a provision for diverting pedestrian access around certain facilities, such as boat

haul-out or repair facilities, where heavy equipment operation may pose a safety hazard;

- J. The marina waterway shall be open free of charge to navigational access by the general public in perpetuity;
- K. The applicant shall provide sewage pump-out facilities for boats using the marina;

16. MONITORING REPORT

- A. The applicant shall submit to the Department's Division of Aquatic Resources all monitoring reports for water quality turtle, marine resources inventory, etc.;
- B. The applicant shall conduct an additional marine biota survey three years following the breakthrough connecting the channel with the marina basin and submit the results to the Department. The survey shall be conducted along the same transects used to establish baseline data prior to construction;

OTHER/GENERAL

- 17. The applicant shall construct and maintain for a specified period of time as determined by the Department, an artificial reef subject to review and approval by the Department. Prior to the construction of an artificial reef, the applicant shall apply for, and obtain a Conservation District Use Permit;
- 18. The applicant shall be responsible for the maintenance dredging of the entrance channel to its approved depth and in accordance with the U.S. Corps of Engineers' Department of the Army Permit;
- 19. The applicant shall notify the U.S. Coast Guard of its intention for marking the entrance channel and marina with navigational aids;
- 20. The applicant shall obtain appropriate approval from the Commission on Water Resource Management relative to the caprock aquifer issues;
- 21. The applicant shall be responsible for removing any noxious aggregations of algae washed up along the shoreline fronting the applicant's property;
- 22. The applicant shall provide fully developed and Government approved plans for constructing a flood drainage system through the marina

development in concert with the drainage plans for the upper development of Kapolei, Ewa Villages, other developments in the Kaloι Gulch watershed;

23. The applicant shall submit a comprehensive Maintenance and Management Plan for the Marina and its operations to the Department for review and approval prior to opening the marina for vessel use. The plan should be designed to protect water quality of the marina and ocean waters, among other things, and shall include, but not be limited to the following:
- Elements identified on pages 11, 12, and 41 in the permit application;
 - Enforcement;
 - Responsibilities for compliance of the plan clearly defined;
 - Procedures for coordinating with the U.S. Customs, the U.S. and State Department of Agriculture, the Department of Health and other federal and state agencies having an interest in processing foreign arrivals;
24. Prior to the submission for approval of construction plans, the applicant shall submit a site plan of the marina area to the Department for review and approval. The site plan shall include, but not be limited to the following information:
- The location of the artificial reef;
 - Identify areas around the both sides of the marina entrance and periphery of the marina that will be open to the general public (including the physically challenged) for fishing. Identification should include: specific areas or number of areas and fishing piers, a description of these areas (i.e. entrance channel boundaries, open spaces, etc.), and distances to these fishing areas from planned parking areas;
 - Oneula Beach Park and the nine-acre expansion area;
 - Identify the setback areas required by the City Council's Resolution 93-286 granting a Special Management Area Use Permit and Shoreline Set Back Variance, Ordinance No. 93-94 Unilateral Agreement and Declaration for Conditional

Zoning, and the Urban Design Plan approved by the Department of Land Utilization;

- **Public boat slips;**
 - **Launching ramp complex;**
 - **Sewage pumpout facilities;**
 - **Public access (pedestrian, bicycle, and vehicular) to and around the edge of the marina, signs, and lighting;**
 - **Public parking, restrooms and showers;**
- 25. Live-aboards shall be prohibited in the Marina;**
 - 26. The applicant shall comply with the provisions contained in the Memorandum of Agreement (MOA) among the applicant, the Hawaii State Historic Preservation Division, the U.S. Army Corps of Engineers, the Advisory Council of Historic Preservation, and the Office of Hawaiian Affairs regarding the treatment of historic sites on the project site;**
 - 27. The applicant shall submit a copy of the "Best Management Practices" plan required by the State Department of Health pursuant to Section 401 Water Quality Certification to the Department for review and comment;**
 - 28. To the extent practicable, the applicant shall preserve native strand vegetation and/or use xeriphetic native plant species for landscaping of coastal areas;**
 - 29. The applicant shall provide educational information on the safe use of marinas and pollution control, in the form of brochures, signs, video, and posters;**
 - 30. The applicant shall submit an annual report to the Department which shall include the status of compliance of the permit conditions and implementation of the land use;**
 - 31. That the Board reserves the right to amend these conditions and the right to stop work should any unanticipated and/or unreasonable adverse ecological results occur;**
 - 32. Implementation of the project shall be in general conformity with the representations made in the application on file with the Department and**

at the contested case hearing. Any substantial change in the size or nature of the marina as determined by the Department shall require an amendment to the permit. Any change that the Department determines to be incidental, shall be permitted upon review and approval of the Chairperson.

- 33. The BLNR shall retain continuing jurisdiction over this permit and in the event of any violation or non-compliance with an aforementioned condition (general or special) the BLNR may revoke this permit or take any appropriate action.**

DATED: APR 26 2000



TIMOTHY E. JOHNS

Chairperson, Board of Land and
Natural Resources

RECUSED

LYNN P. McCRORY

Member, Board of Land and
Natural Resources



WILLIAM KENNISON

Member, Board of Land and
Natural Resources

DID NOT PARTICIPATE IN
FURTHER HEARINGS

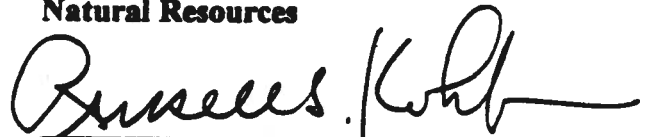
COLBERT M. MATSUMOTO

Member, Board of Land and
Natural Resources



KATHRYN WHANG INOUE

Member, Board of Land and
Natural Resources

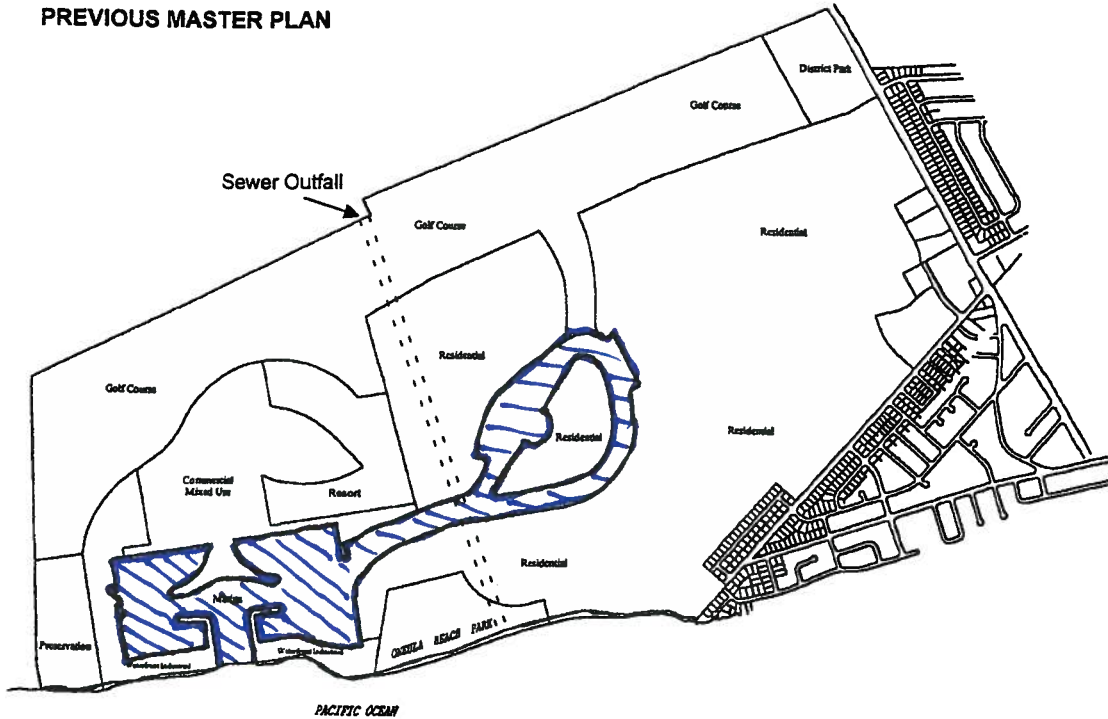


RUSSELL S. KOKUBUN

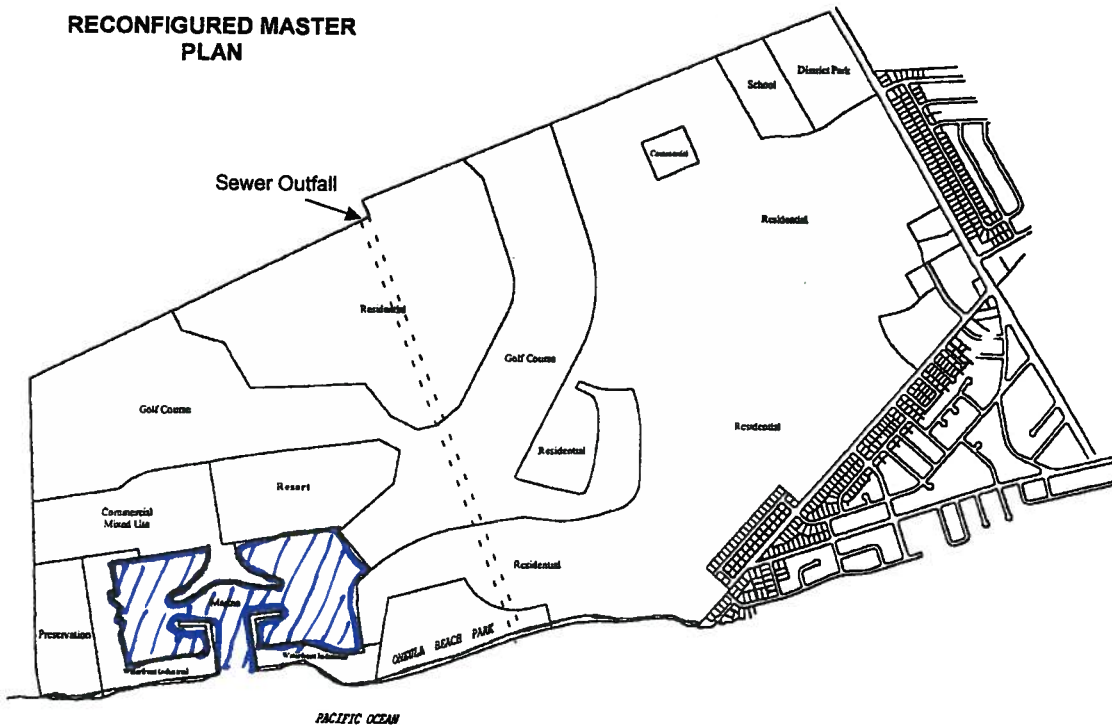
Member, Board of Land and
Natural Resources



PREVIOUS MASTER PLAN



RECONFIGURED MASTER PLAN



These materials are based on the current development plans for Ocean Pointe. They are conceptual in nature and there are no guarantees that all or any of the components will be developed or that the components will be developed as depicted here.

